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SUBJECT: EVALUATING THE ENFORCEMENT OF DOMINICAN LABOR LAW
IN THE AGRICULTURAL SECTOR

11. (U) SUMMARY: Many employers in the Dominican agricultural sector regularly violate the Dominican labor code, according to several Dominican non-governmental organizations and other entities. Many of the workers in this sector are involved in the production of commodities that are exported to the United States. Others work in industries competing with U.S. imports, such as rice. These workers are predominately Haitian or of Haitian descent, both the undocumented ones and those with work permits. The most commonly reported violations include hiring non-Dominicans in violation of the law; denying written work contracts to employees who request them; paying salaries that are below the legal minimum; employing children in violation of the law; making salary deductions that are not authorized under the law; denying employees the monetary benefits to which they are legally entitled; failing to submit social security deductions to the relevant government offices; shorting workers in the assessment of their production; discriminating against workers based on national origin and gender; and preventing employees from unionizing. There is some evidence of a willingness on the part of labor inspectors to enforce labor law for the benefit of rural workers, but the Ministry of Labor's inspectorate division lacks the vehicles and other resources it needs to conduct rural inspections. The labor court system is perceived to be slow, inefficient, and unfairly weighted towards the employers. END SUMMARY.

12. (U) This cable examines the performance of the Dominican government over the past several years in enforcing its labor laws for the benefit of rural agricultural laborers (who tend to be undocumented persons of Haitian descent) involved in the production of sugar, fruits and vegetables, tobacco and tobacco products, and rice. Looking to the future, under the Dominican Republic - Central America Free Trade Agreement (DR-CAFTA), which entered into force on March 1, 2007, each member country agreed to enforce fully its own labor laws.

13. (U) Last year, according to the U.S. Department of Commerce, the Dominican Republic exported USD 588.2 million in agricultural products to the United States. This figure represented approximately 13 percent of total Dominican exports to the United States. Sugar, fruit and vegetables, and tobacco (including tobacco products) were selected for this report because they represent 75 percent of Dominican agricultural exports to the United States. Last year the

country exported USD 122.4 million in sugar and sugar confectionary products, USD 269.5 million in tobacco products and manufactured tobacco substitutes (an amount somewhat offset by the country's importation of USD 94.2 million in tobacco products from the United States that same year), and USD 48.2 million in edible vegetables, fruit, and nuts. The Dominican Republic benefits from the highest U.S. tariff rate quota (TRQ) for sugar and continues to receive the highest single-country allocation. Rice was selected for this report because of its status as a significant U.S. export to the Dominican Republic, expected to grow under DR-CAFTA. The U.S. Foreign Agricultural Service estimated the volume of U.S. rice exports to the Dominican Republic at USD 13.8 million in 2006.

14. (U) The Dominican Board of Agro Businesses (JAD) says that 80 percent of all Dominican agricultural output is generated by "very small" producers. For example, according to popular journalist Huchi Lora, seventy percent of Dominican tobacco producers cultivate their product on parcels of 20 tareas (approximately three acres) or less. One notable exception to this tendency can be found in the sugar industry, where approximately 90 percent of all production is generated by two private companies: Central Romana, owned by the Fanjul family, and the smaller Compania Anonima de Explotaciones Industriales (CAEI), owned by the Vicini family.

CONTEXT: THE GROWING "HAITIAN-IZATION" OF AGRICULTURE

15. (U) Over time, Dominican agriculture has come to rely predominately on the labor provided by undocumented persons of Haitian descent. Although these workers are commonly characterized by journalists and politicians as "illegal

immigrants," it is important to note that this classification is often incorrect. Although many of these workers did in fact migrate "illegally" from Haiti, others came legally with work permits or other forms of de facto government consent. Many others were born in the Dominican Republic.

-- Big Sugar's Historical Addiction to Haitians

16. (U) For nearly a century, Dominican sugar producers have relied heavily on the cheap labor provided by Haitians. In sugar worker communities, known as "bateyes," services were rudimentary and living and working conditions were extremely harsh. After surpassing 1.2 million tons during the golden years of the 1970s, Dominican sugar production gradually fell to an all-time low of 371,000 metric tons in 1999 due primarily to the collapse of organized harvesting on state-owned land. The Haitian workers and their families who had resided on bateyes associated with the State Sugar Council (Consejo Estatal del Azucar or CEA) were left with few prospects as their jobs vanished. Last year total Dominican production was estimated at 520,000 metric tons.

-- Migrant Workers Seek Prospects Outside the Bateyes

17. (U) The reduced demand for workers in the sugar industry and continuing economic instability in Haiti have driven migrant workers to seek employment in other sectors of the Dominican economy. A survey conducted in 2002 by the Latin American Faculty of Social Sciences (FLACSO) in coordination with the International Organization of Migration (IOM) found that of the migrant population of Haitian descent in the Dominican Republic, only 15.7 percent worked in the sugar industry, whereas 18.6 percent worked in other areas of agriculture, 38.9 percent worked in construction, and the remaining 26.8 percent worked elsewhere.

18. (U) Employing Haitian laborers in agricultural tasks is appealing to rural landowners because Haitians work for less. An article from 2005 in popular newspaper Diario Libre

documented that it costs an employer in the coffee sector about twice as much to employ a Dominican as it does to employ a Haitian. Last year the Dominican Board of Agro Businesses (JAD) estimated the participation of "Haitians" throughout Dominican agriculture as comprising approximately 90 percent of the work force. The JAD Executive Vice President stated to poloff in May that this proportion had fallen to 80-85 percent in recent months.

-- Their Legal Status

¶9. (U) For many years migrant workers in the sugar industry were able to obtain valid work permits granting them de facto legal status in the country. Decree 417-90, implemented in October 1990, instructed the Immigration Directorate to proceed "with the greatest speed" to "normalize" the immigration status of undocumented workers. Many cane workers and other batey residents say that during that "registration drive," immigration inspectors took from them any identification documents they possessed, promising that the documents would be replaced with official immigration papers. Few of those living in the bateyes ever received the promised immigration papers. Most remain undocumented today.

¶10. (SBU) A new mechanism appears to have replaced the old system of "fichas." Employers can pay a fee to the Directorate of Migration in order to obtain a six-month permit to hire a foreign worker. This mechanism does not appear to be well-defined or well-enforced. Some non-governmental organizations (NGOs) have asserted that the process does not convey legal status to workers or their families and does not protect them from repatriation; the process instead appears oriented towards protecting employers. A survey of Haitian laborers involved in the production of bananas, plantains, rice, melons, and tomatoes in the provinces of Montecristi and Valverde Mao (northeastern Dominican Republic) conducted by the Jesuit Refugee Service (JRS) estimated that around 65 percent of workers held these six-month work documents. However, in a meeting with poloff, JAD Executive Vice President Osmar

Benitez acknowledged that most agricultural employers do not go through the process of soliciting permission to hire Haitian workers.

-- Their Vulnerability to Exploitation

¶11. (U) Lacking valid documentation of their legal status in the Dominican Republic, migrant workers and their Dominican-born descendents, whom the government generally refuses to document, are not eligible to participate in many aspects of Dominican society and the economy. Undocumented adults are ineligible to apply for jobs in the formal sector. Undocumented children have limited and inconsistent access to public schools. Undocumented persons of Haitian descent face the risk of being "repatriated" to Haiti; last year the Dominican government repatriated more than 26,000. Depending on which estimates you use of the size of the Haitian community, this was anywhere from two to ten percent of those who could have been targeted.

¶12. (U) Principle IV of the Dominican Labor Code states that "employment laws govern on a territorial basis and make no distinction between Dominicans and foreigners." This provision and others have been broadly interpreted to cover foreigners who are also undocumented workers. However, migrant workers' precarious legal situation and lack of real employment alternatives make them far more vulnerable to unscrupulous employers.

¶13. (U) Other organizations have studied the problems and reached slightly different conclusions. The Latin American Social Sciences Faculty (FLACSO) reports that high labor mobility and excellent networks of contacts among rural laborers allow workers greater flexibility to negotiate better working conditions than one would expect. Yet workers

are hindered in these efforts by a broad lack of understanding of their rights under the Dominican Labor Code.

SOME ALLEGED LABOR VIOLATIONS IN AGRICULTURE

¶14. (U) Following are some of the major labor violations that NGOs and others have documented in the sugar, tobacco, and fruit and vegetable sectors of Dominican agriculture.

The Embassy is not in a position to verify all of these alleged violations, but we have no reason to suspect that the reports are not accurate.

-- Limits on Hiring Non-Dominicans

¶15. (U) Article 135 of the Dominican Labor Code requires that at least 80 percent of the workers in any private business be Dominican citizens. Article 144 further states that the "superintendents, overseers, supervisors and any other workers who toil in agricultural tasks must be of Dominican nationality."

¶16. (U) Despite these stipulations, Dominican agriculture today relies almost exclusively on undocumented laborers of Haitian descent. As mentioned previously, even the Dominican Board of Agro Businesses acknowledges that 80-90 percent of the country's agricultural laborers are "Haitian." The JRS study documented similar results in the provinces of Montecristi and Valverde Mao. It estimated the prevalence of Haitian labor at 90 percent of workers in the banana industry, 90 percent of workers in the rice sector, and "virtually all" of the workers involved in the production of tomatoes. The sugar industry's historic reliance on undocumented workers of Haitian descent continues today.

-- Work Contracts

¶17. (U) The Dominican Labor Code requires a work contract between the employer and employee to govern all types of employment. The law allows for both written and oral contracts. However, Article 19 of the Labor Code states that

"either party (to a contract) can demand of the other party that a verbal work contract be formally put into writing."

¶18. (U) In the agricultural sector of the Dominican economy, it appears that few employers provide written work contracts to their employees, even when asked to do so. The JRS study of agricultural workers in Montecristi and Valverde Mao estimated that just three percent of those workers held written work contracts. NGOs allege that the lack of written work contracts makes workers more vulnerable to exploitation -- for example, being paid less than the wages they are promised when they accept their jobs; being classified as "day laborers," which allows employers to pocket their social security deductions (see section on Social Security), disqualifying them for their legally-mandated benefits; and being paid less than the minimum wage.

¶19. (SBU) An ongoing case involving sugar corporation CAEI illustrates the perceived pitfalls that workers associate with strident efforts to demand written contracts. For more than two years NGOs have been demanding that CAEI provide its workers with written work contracts; the company currently still does not do so. In August 2006, a local NGO obtained pages of names and signatures from CAEI workers petitioning for written work contracts. In accordance with Dominican law, the NGO notified CAEI in September of the request. CAEI declined to respond. The Dominican Labor Code requires that claimants allow a "reasonable period of time" to elapse before notifying the Ministry of Labor that a party has failed to respond to a request for a written contract. The NGO notified the Ministry of Labor of the case in January

2007, but the Ministry misplaced their file. The NGO submitted a new notification in April. Labor inspectors summoned attorneys from both sides to attend a preliminary meeting on May 4, but CAEI attorneys failed to appear. The meeting was rescheduled for May 8. However, in a letter to the NGO representing the workers, CAEI stated that all of the workers listed in the case had been discharged for reasons allegedly unassociated with their complaint. Many of those workers had 20 to 30 years of experience at CAEI.

-- Minimum Wage

¶20. (U) With respect to agricultural laborers, the Dominican Labor Code sets the daily minimum wage at 80 pesos (USD 2.50) per day for workers in the sugar industry and at 130 pesos (USD 4.00) per day for workers in all other agricultural sectors. The lower level for sugar laborers may be associated with that industry's historic reliance on Haitians.

¶21. (U) Most agricultural laborers tend to be hired as "obreros," workers who are paid per unit of production. For example: cane cutters are paid by the ton of sugar cane they cut; planters are paid per row of seeds they sow; tomato pickers are paid by the number of sacks they fill. However, minimum wage regulations stipulate that no matter how much these workers accomplish in a day, their employers are required to pay them at least the minimum daily wage.

¶22. (U) During the six-month harvesting season, most sugar cane workers appear to be able to earn the minimum wage over the course of a full day's work. For example, CAEI pays laborers 86 pesos (USD 2.70) (according to a long-resident non-Dominican observer) to 105 pesos (USD 3.30) (according to CAEI Public Relations Manager Campos de Moya) for every ton of sugar they cut. Generally, the strongest workers can cut around two tons in a 10-hour workday (the maximum envisioned in the Labor Code). However, many older laborers have little choice but to work the fields as well. Human rights NGOs report that many of these workers are not able to cut a full ton of cane in a day. When pay day arrives, company officials allegedly pay these workers only for the amount of cane that they actually cut -- even if this amounts to less than the 80 pesos a day that is the minimum wage for workers in the sugar industry.

¶23. (U) During the six-month off-season, CAEI (like other sugar producers) offers some small jobs, such as clearing land, to workers who remain in their communities. However, workers are not generally able to earn the legally mandated minimum wage with these jobs. During a visit to sugar worker

communities on CAEI property last summer, poloff observed workers and their children who had eaten nothing over the course of the day because they could not afford food. Workers choose to remain in their communities despite these difficulties for a number of reasons -- to remain with their families, for example, or because they are fearful of being repatriated if they venture outside the relative safety of CAEI property, or because they are staying until the start of the next season in order to collect the portion of wages that CAEI has withheld from their paychecks (see section on "Salary Deductions").

¶24. (U) Since January 2006 the minimum wage for agricultural workers outside the sugar industry has been 130 pesos per day. In 2005 the Jesuit Refugee Service (JRS) conducted a study on the Haitian workers at agricultural plantations in the Dominican provinces of Montecristi and Valverde Mao, located in the northwest of the Dominican Republic. That study found that 25 percent of the workers received salaries of less than 120 pesos per day. Similarly, last year an investigation by newspaper Diario Libre concluded that Haitian workers in coffee plantations received salaries of between 80 and 120 pesos per day.

¶25. (SBU) In a May 1 meeting with poloff, Executive Vice President of the JAD Osmar Benitez asserted that all workers

in Dominican agriculture are paid "well above" the minimum regardless of their legal status. Though some organizations have disputed this characterization, others have supported it. More research is needed to determine whether wage levels for agricultural laborers have increased to match adjustments in the minimum wage.

-- Child Labor

¶26. (U) Dominican law prohibits employment of children younger than 14 years of age and places restrictions on the employment of children under the age of 16. Nonetheless, child labor remains a serious and continuing problem, though there is some evidence it has improved in recent years.

¶27. (U) Between 2000 and 2003 the International Program for the Elimination of Child Labor (IPEC) of the International Labor Organization (ILO) in the Dominican Republic conducted a series of detailed baseline studies analyzing the preponderance of child labor in various agricultural sectors. Those surveys estimated the proportion of children (ages 5-17) who had worked in agriculture within the past year at: 88 percent in the tomato-producing communities near Azua; 83 percent in the fertile garlic, potato, fruit and flower producing region of Constanza; and "significant proportions" (not estimated) in the tobacco-growing regions near Santiago. ILO-IPEC estimated that "practically all" of the children in the rice-growing communities of the northeastern Dominican Republic had worked in the production of rice at some point in their lives, but only around half were working five or more days per week at the time the study was conducted. Sixty percent of the women surveyed in 2005 by the Movement of Dominican-Haitian Women (MUDHA) in the agricultural communities of Mao Valverde stated that their children worked the fields instead of attending school; the most common reason cited for this was an inability to gain school admittance because their children lacked Dominican birth certificates.

¶28. (U) The sugar industry in the Dominican Republic has traditionally insulated itself from outside contacts, and the two major companies (Central Romana and CAEI) declined to permit ILO-IPEC to conduct a baseline survey on their property. Nonetheless, a non-Dominican observer documented widespread evidence of child labor over a period of several years.

¶29. (SBU) CAEI appears to have taken a decision to improve conditions for workers and to improve its image. The company recently stressed that it has a "zero tolerance" policy with respect to child labor. A non-Dominican activist resident in the area stated in September 2006 that the company had made some progress towards this goal. Today CAEI officials unequivocally deny the existence of child labor on their property. Some NGOs dispute this characterization, saying

that although the company's record has improved, children can still be found planting rows in CAEI fields. A non-Dominican observer whom Embassy has reason to consider a reliable source told poloff in April that child labor can still be found in its facilities.

¶30. (U) Children make appealing workers in tasks such as planting because they accept lower pay. According to the JRS study, "Some employers stated that in industrial tomato production, child labor can produce yields similar to those of adult labor; sometimes children can exhibit even more skill due to the size of their hands. In spite of this, child laborers receive wages that sometimes represent only 50 percent of what is received by adults." According to ILO-IPEC (Dominican Republic) Chief Technical Advisor Laetitia Dumas, children are typically paid only 75 to 125 pesos (USD 2.30 - 3.90) for a full day's work -- an amount that is also below the minimum wage.

¶31. (U) Dumas stated that problems with child labor have lessened somewhat in recent years (thanks in large part to

her organization's efforts). However, the problems are far from resolved; in the absence of another detailed series of follow-up studies it is impossible to estimate improvements.

-- Salary Deductions

¶32. (U) Salary deductions have long been a major source of complaint for workers. The Dominican Labor Code allows employers to make only the following types of salary deductions: "1) those authorized by law; 2) those related to union quotas; 3) payroll advances given by the employer; 4) those related to credits granted by banking institutions with the recommendation and guarantee of the employer (...); and 5) those related to worker contributions to private pension plans."

¶33. (U) The two major sugar corporations withhold a portion of every laborer's salary as an incentive for laborers to work to the end of the year's harvest and return for the following year's. According to human rights NGOs, CAEI makes the largest such deductions (approximately 10 percent) from its workers' salaries. Those workers who fail to return effectively forfeit this portion of their earnings. However, even those workers who do return sometimes report that their deductions are lost, their ID numbers inaccurate, or the amounts awaiting them are far less than expected.

¶34. (U) JRS documented extensive pay discounts from workers in other agricultural sectors as well. They noted in their study of agricultural laborers in of Montecristi and Valverde Mao that workers' paychecks were being docked for "social security (which migrant workers almost never receive), reimbursement for migration expenses, savings, consumed merchandise, check exchange," and other similar discounts.

-- Additional Monetary Compensation

¶35. (U) The Dominican Labor Code establishes a number of entitlements to monetary compensation that are calculated according to the length of time a worker has been employed. These include: the right to a Christmas bonus of a full month's extra salary in December (or, for employees who lack a full year's experience at their place of employment, a prorated payment that correlates with the number of months the worker has been employed); the right to "economic assistance" for certain categories of workers (for example, those who are badly injured) whose work contracts are terminated due to extraordinary circumstances after at least four months of service; compensation in lieu of the employee's right to have advance notice of the termination of his or her employment (the mandatory length of that advance notice is determined by length of employment); and the right to severance pay, the amount of which correlates with the worker's length of employment.

¶36. (U) JRS documented that of the agricultural laborers they studied, 40 percent worked on a seasonal basis (averaging around four months at their places of employment), whereas the remaining 60 percent worked on a "permanent" basis at

their current places of employment (of these, around 47 percent had more than six years of continuous experience at their current places of employment). Because most workers in the agricultural sector lack written work contracts and are usually paid in cash, they have little evidence to document their length of employment. NGOs allege that agricultural employers regularly take advantage of this lack by classifying even "permanent" employees as "day laborers," regardless of their length of employment. "Day laborers" are not generally entitled to the benefits outlined in the previous paragraph.

¶37. (U) NGOs report that because agricultural laborers are not aware of their rights to compensation based on length of employment, and because employees are typically classified as "day laborers," virtually all laborers in the agricultural

sector are denied Christmas bonuses, economic assistance, severance pay and other such benefits. Central Romana, the largest producer of sugar, appears to be unique in that it documents length of employment and pays its employees the corresponding benefits to which they are due.

-- Social Security and Medical Benefits

¶38. (U) Dominican law requires that a percentage of most workers' salaries be deducted and submitted to the national social security office. Although the salaries of agricultural laborers are generally docked for social security purposes, those workers rarely receive social security compensation. This forces older workers to continue working the fields for reduced wages well into their 80s, if they live so long.

¶39. (U) In its survey of agricultural laborers, the JRS reported that the banana and plantain industries, despite taking the full amount of social security deductions from workers' paychecks, commonly classified their employees as "day laborers" when reporting to the relevant government social security offices. This reduced the amount they were required to submit and allegedly allowed the employer to pocket the difference. Many of the employees classified as "day laborers" had months or years of experience at the same business.

¶40. (SBU) JRS associates said that according to records in the social security office in Valverde Mao, the banana and plantain industries were the only ones that reported any sort of social security payments at all for their workers. If so, this means that laborers in the rice, melon, tobacco and tomato industries, even those who believe they are paying social security, would have grossly inaccurate or missing records in the government's social security office. They would be eligible for no benefits.

¶41. (U) Similar problems exist in the sugar industry. The Dominican Center for Consultancy and Legal Services, or CEDAIL, is an NGO affiliated with the Catholic Church that advocates on behalf of workers in the sugar industry. It studied 55 randomly selected residents of bateyes on CAEI property who were over 60 years of age and had submitted applications for pension payments between 2003 and 2004. The organization found that although most of those surveyed had more than 20 years of experience working at CAEI, none had been able to obtain the pension payments that they said were due to them. CEDAIL associates said those workers had been turned away by social security officers who stated their records were faulty, and CAEI representatives were unwilling to help them resolve the problems. CEDAIL stated that similar problems could be found with respect to workers at Central Romana.

¶42. (U) Employers in the agricultural sector cannot be blamed for all of the problems associated with their workers' inability to obtain social security. As in other social services, in recent years Dominican government officials have typically taken individual initiative to prevent "Haitians" from gaining access to benefits. In some cases these involved simple non-action by the officials.

-- Discrimination

¶43. (U) Numerous organizations have documented what appear to be widespread patterns of discrimination against persons of Haitian descent in the agricultural sector. For example, a 2004 study conducted by FLACSO found that throughout the agriculture and construction industries, Haitian workers are generally given the lowest-paid jobs and hardest labor, and they are not given opportunities to advance. As an example, the FLACSO survey mentioned a cocoa plantation where Haitian workers were limited to jobs cleaning and weeding underneath the bushes of cocoa plants. When asked why this was so, the plantation overseer explained to the investigators that the more specialized tasks required "people he could trust." A

non-Dominican familiar with the situation stated that CAEI gave its Dominican workers considerably better housing than that assigned to similarly employed Haitian workers.

¶44. (U) Among these workers, Haitian women face even tougher challenges in agricultural work. In its study of female workers of Haitian descent in the agricultural communities of Mao Valverde, MUDHA found that 58 percent of the women in those communities worked in agriculture. According to that study, "females of that zone asserted during focal groups that they were mistreated in the plantations; they said they were given no life or health insurance and that their rights as workers were constantly violated. (...) (They said) they were paid less than the men and less than Dominican women who performed the same jobs." The JRS study concluded that because women were paid lower wages than men, employers almost never requested immigration cards for female employees because they considered that they were not worth the investment. That study also documented widespread complaints among female employees that they were sexually harassed by male overseers, who sometimes offered better working conditions in exchange for sex.

-- Fraudulent Assessment of Production

¶45. (U) A common complaint among agricultural laborers who are paid based on units of production (obrerros) is that they are shorted in the assessment of their production. In the sugar industry, for example, NGOs have long documented complaints among workers that the scales used to weigh the sugar cane are unfairly set to under-assess the tonnage of their production. NGOs have on various occasions requested assistance from the Ministry of Labor's inspectorate division to verify the accuracy of CAEI's scales; to date this assistance has not been provided. The JRS survey documented the complaints of female tomato pickers who alleged that overseers commonly paid them for fewer sacks of tomatoes than they actually picked.

-- Freedom of Association

¶46. (U) The Dominican Labor Code establishes workers' rights to organize, including in unions. Union membership is relatively low across the economy, but few agricultural laborers belong to any sort of organized, nationwide labor union. The JRS study estimated that 82 percent of the workers in the provinces they studied did not belong to any sort of organization that advocated for employees on labor issues. Many NGOs say that traditional Dominican labor unions are unwilling to recruit as members workers of Haitian descent; this, they say, is the primary obstacle obstructing the unionization of Haitian employees. Among the 18 percent of workers who were organized, the JRS study concluded that most had made de facto efforts to facilitate dialogue with their employers, and that these were generally specific to a particular place of employment. However, these efforts were hindered by a broad lack of understanding on the part of workers of their rights under the Labor Code. NGOs have also alleged that many agricultural employers refuse to permit their employees to unionize. The Embassy cannot cite any specific cases of this.

----- THE STATE'S CAPACITY AND WILLINGNESS TO ENFORCE THE LAW -----

-- The Labor Inspectorate

¶47. (U) The Inspectorate division of the Dominican Ministry of Labor is responsible for verifying compliance with Dominican labor law throughout the country. The Ministry has 38 offices located throughout the country and employs more than 200 labor inspectors.

¶48. (U) Labor inspectors, particularly those in Ministry's central office, tend to be regarded as capable and impartial, though inspectors in some isolated, rural offices have been accused of incompetence and pro-employer bias, especially in cases that involve workers of Haitian descent. One attorney submitted to poloff an example of a labor inspection in 2004 where regional inspectors concluded that the employer was not at fault. The attorney, who worked for an NGO that represents persons of Haitian descent, challenged the inspection and requested a new inspector from the Ministry's central headquarters in Santo Domingo. The Ministry complied and sent a new inspector, who apparently nullified the regional inspector's report and concluded the employer was at fault. That case, which involves the non-payment of severance pay at a palm oil plantation, has worked its way up to the Supreme Court.

¶49. (SBU) The example above suggests that the Ministry of Labor is willing to enforce key labor law provisions, even for the benefit of workers of Haitian descent. However, the Director General of the Inspectorate Division says his staff are held back by a lack of crucial resources -- particularly vehicles. The Ministry's inspectorate division has only two trucks available for use throughout the country for inspections; both are usually committed for free-trade zone (FTZ) inspections and for managerial use.

¶50. (U) The lack of vehicles means the Inspectorate is essentially unable to carry out "spot investigations" or respond to worker complaints in the agricultural sector in the fashion that it does in the major metropolitan zones. As a result, fewer than four percent of the inspections carried out by the Ministry last year related to the agricultural sector.

¶51. (U) The inspectorate's targeted inspection and compliance initiative in the sugar sector, launched in January 2005, is illustrative of the problems inspectors have in agricultural areas. Like other agricultural zones, sugar communities are notoriously difficult to reach; during the Ministry's last inspection trip to one such community last summer, the inspectors' truck became stuck in the mud and was not towed out until the next day. Since that incident, no further inspections have been conducted in sugar communities. The sense of isolation and separation from central authorities, reinforced by the failure of labor inspectors to visit rural areas, makes laborers less likely to seek relief.

¶52. (U) Even in cases where inspectors do investigate, the problems may remain unresolved. Inspectors first attempt to resolve such cases through binding conciliation, which is often effective, but not always. The major sugar corporations, for example, rarely work to reach agreement with complainants during this phase. An example of this can be found in the CAEI case mentioned in para 19, where CAEI attorneys declined to attend conciliation meetings and discharged all of the complaining workers.

-- The Labor Courts

¶53. (U) Those cases where the parties fail to reach agreement during the conciliation phase must be submitted to the labor courts. In the administration of labor justice, as in other sectors of Dominican law, the labor courts are widely perceived as slow, inefficient, and non-transparent. Undue influence can be a problem. These criticisms were cited in the Department's 2006 Human Rights Report and have been documented by other observers. The case mentioned in para 48, for example, dates from February 2004 and still has not been resolved.

¶54. (U) A study of case load conducted by the Foundation for Institutionalism and Justice (FINJUS), a local NGO, in labor jurisdictions from 2000 documented the facts that most of the cases involved claims of wrongful separation from employment (86 percent). Second in number were those dealing with

salary issues (8 percent). The average case resolution time was 15.3 months in courts of first instance and 16.4 months in appeals court. Major sources of delay in case resolution were identified in the trial phase (average 8.6 months between final case presentation and emission of the sentence) and initial case preparation (average 6.3 months). Only 4.5 percent of cases were conciliated after reaching the court system (others may have been conciliated at the level of the Labor Ministry, but no statistics are available to document the volume), whereas 83 percent were resolved by judicial decision.

¶55. (SBU) The study reported significant inequity in access to justice, with far better access for the well-off, a grossly inadequate number of labor jurisdiction public defenders, and generally negative impressions of the efficacy of the system from the perspective of the user and the average citizen who had never had contact with the labor justice system. Generally speaking, workers are not aware of their rights under the law, or of procedures for registering a claim; these problems are particularly pronounced in the agricultural sector. Significant levels of corruption and influence peddling were reported, particularly involving cases of alleged collusion between private lawyers, prosecutors, and judges to lower claims and "buy" cases from workers who could not afford to wait months for a final settlement.

APPROACHING THE PROBLEMS

¶56. (U) Embassy has recommended that supplemental DR-CAFTA funds related to labor be used to fund a project educating migrant workers about their rights under the Labor Code, including the right to unionize. That project could also include a component to support and encourage existing and start-up unions to expand recruitment and advocacy efforts in these communities. As stated previously, migrant workers have shown remarkable initiative for using to their advantage their high labor mobility and networks of contacts, making their own de facto efforts to demand better working conditions. If migrant workers were educated on their rights under the Labor Code and encouraged to network with workers in other plantations, these nascent efforts to organize and advocate could be given a significant boost. Embassy also recommended a project to increase training for regional labor inspectors and provide the Labor Inspectorate with vehicles to enable them to conduct more inspections.

¶57. (U) Drafted by Alexander T. Bryan.

¶58. (U) This and other extensive material can be found on our SIPRNET site, <http://www.state.sgov.gov/p/wha/santodomingo/> .
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